

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

MARY JEAN DONOHUE, PARENT)	
OF SHANE DONOHUE,)	
)	
Appellant,)	OSPI 232-93
)	
vs.)	
)	<u>ORDER</u>
TRUSTEES, JEFFERSON COUNTY)	
HIGH SCHOOL DISTRICT NO. 2)	
)	
Respondents.)	

* * * * *

Jefferson County Superintendent Sandra Streib dismissed Mary Jean Donohue's appeal of the expulsion of Shane Donohue by the Jefferson County High School [JCHS] Trustees because the appeal was filed more than 30 days after the Trustees' final decision.

On August 28, 1993, the JCHS Trustees held a closed hearing to consider expelling Shane Donohue. His parents submitted written motions that were denied and a signed statement, dated August 27, 1993, that they were removing their son from school. The trustees announced their final decision to expel Shane Donohue in an opening meeting but did not issue a written decision.

The Donohues appealed to the county superintendent on December 4, 1993. She dismissed the appeal for lack of jurisdiction on December 20, 1994. On January 4, 1994, the Donohues appealed to this superintendent.

STANDARD OF REVIEW

The county superintendent's decision to dismiss the appeal is a conclusion of law. On review of orders dismissing appeals, this

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superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

DECISION AND ORDER

The county superintendent correctly concluded that the time for appealing the trustees' decision expired before the appeal was filed. The order dismissing is AFFIRMED.

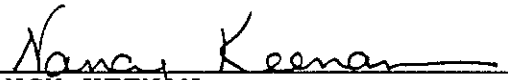
MEMORANDUM OPINION

The only issue before this superintendent is whether the appeal was timely. ARM 10.6.103(2), which governs appeals to the county superintendent, states:

A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the governing authority of the school district is made. Notice of appeal shall be served by certified mail.

The JCHS Trustees' final action in this matter occurred August 28, 1993. Any appeal had to be filed within 30 days -- in this case September 27, 1993. The county superintendent did not have jurisdiction to act on the appeal filed on December 4, 1993.

DATED this 27 day of April, 1995.


NANCY KEENAN

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 27th day of April, 1995, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

Mary Jean Donohue
1600 Bond Road
Dillon, MT 59759

Charles E. Erdmann
ERDMANN LAW OFFICE
P.O. Box 5418
Helena, MT 59604-5418

Pat Reichert

Pat Reichert, Paralegal
Office of Public Instruction

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